

Second Appeal No.29/1996

1) Smt. Nirmala Kashinath Rau,
of full age, residing at
23, Anuprita Buiding, of
Caeasar Road, Amboli Naka,
Andheri (West)
Bombay - 400 058.

2) Smt. Monorama Gajanan
Khadpe, of full age,
residing at 46, Navayug Co-op.
Housing Society Ltd.,
Vishnu Nagar, Thane,
Maharashtra.

3) Smt. Pratima Premanand Ramani,
of full age, residing at 122,
Manek Mansion, Opposite New
Central Railway Quarters,
Sion (West) Bombay - 400 022.

4) Smt. Meena Satish Nabar,
of full age, residing at
10, Amarapali Co-operative
Housing Society Limited,
Paranjape Scheme - A, Road No.2,
Vile Parle, (East),
Bombay - 400 057.

..... Appellants.

V/s.

1) Smt. Ratan Vassudev Dhempe,
widow of late Vassudev Dhempe, of
full age, domestic,

2) Shri Vithal Vassudev Dhempe,
son of late Vassudev
Dhempe, of full age, businessman,

3) Shri Purushottam Vassudev Dhempe,
son of late
Vassudev Dhempe, of full age,
service.

4) Shri Gajanan Vassudev Dhempe,
son of late Vassudev
Dhempe, of full age, domestic.

all Nos.(1) to (4) residing
at Nerul, Bardez, Goa.

... Respondents.

Mr. V.K. Bodke, Advocate for the appellants.

Mrs. A.A. Agni, Advocate for the respondents.

CORAM: V.C. DAGA, J.

DATE : JUNE 14, 2002.

ORAL JUDGMENT :

This appeal arises from the Judgment and Decree of the Addl. District Judge, Mapusa in Regular Civil Appeal No.64/1990 dated 31.1.1996, reversing the Judgment and Decree passed by the Civil Judge, Sr. Division, at Panaji in Civil Suit No.35/80/C dated 28.9.1990, wherein the suit for eviction has been found to be not maintainable, in view of the extension of Rent Control Legislation to the area in which the suit building is situated.

FACTUAL BACKGROUND

2. The factual background of the case can be stated quite shortly.

3. The original plaintiff, late Shri Dattatraya Walaulikar vide Agreement dated 2.8.1971 had allowed one Vasudeo Dhempe to use western half portion of the house situated in Village of Nerul, Bardez, Goa on monthly payment of Rs.25/- for a period of 36 months on the leave and licence basis.

4. The original licensee, said Shri Vasudeo Dhempe left for heavenly abode on 2.7.1972. The present defendants continued to use and occupy the said house as his heirs and successors. The defendants did not pay the licence fee to the plaintiff since the date of death of said Vassudeo. In spite of the expiry of the agreement on 1.8.1974, the defendants continued to occupy the said house. They did not vacate the same. The plaintiff, therefore, by notice dated 10.1.1980 terminated the tenancy of the defendants and called upon them to vacate the said house on or about 2.2.1980. However, the defendants neither vacated the suit house, nor any amount towards the use and occupation charges was paid by them, which compelled the plaintiff to file suit for possession with consequential reliefs.

5. On being summoned, the defendants appeared and filed their written statement and contended therein that the suit house was taken on lease for residential purpose as well as for commercial purpose to carry on business in the said premises. The defendants claimed to have constructed two rooms with the consent of the original plaintiff by spending amount of Rs.10,000/-. The defendants denied that they were in arrears of rent. In short, according to the defendants, the plaintiff was not entitled to claim vacant possession of the suit house or arrears of rent. It appears that during pendency of

the suit, original plaintiff also left for heavenly abode and came to be substituted by his legal representatives, who are, hereinafter, referred to as "plaintiffs" for short.

6. The trial Court, relevant to the pleadings, framed relevant issues and tried suit on merits. Trial Court was pleased to decree the suit with costs and directed the defendants to deliver vacant possession of the suit house within 90 days from the date of Judgment and Decree and further directed payment of Rs.1,500/- towards arrears of rent for five years and mesne profits at the rate of Rs.100/- per month from 2.2.1980 till vacant possession is delivered.

7. Aggrieved by the aforesaid Judgment and Decree, the present respondents, the original defendants preferred an appeal before the Addl. District Court, Mapusa being Regular Civil Appeal No.64/90. The same was heard by the learned Addl. District Judge, Mapusa, who was pleased to hold that on account of change in law to the extent it benefits the tenants, the suit was not maintainable. He relied upon the provisions of Section 59 of the Goa, Daman and Diu Buildings (Lease, Rent & Eviction) Control Act, 1968 ("the Goa Rent Control Act" for short) while allowing appeal and dismissed suit on the preliminary issue without considering the merits of

the matter.

8. Aggrieved by the Judgment and Decree passed by the learned Addl. District Judge, Mapusa present second appeal is preferred by the appellants (original plaintiffs). This appeal throws up an interesting question of some potential general significance in relation to the law of the Goa Rent Control Act; in particular to the extent of applicability of the said Act to the pending suits; on the date on which it was extended to the entire remaining area of present State of Goa.

RIVAL CONTENTIONS

Appellants' submissions :

9. At the outset, learned Counsel appearing for the appellants contended that it was obligatory on the part of the Lower Appellate Court to decide all the issues which were involved in the appeal. He further contended that the suit could not have been dismissed for the reasons stated in the impugned Judgment. In his submission the jurisdiction of the Civil Court was not taken away by the amended provisions of the Goa Rent Control Act. He pointed out that at the time when the suit was filed i.e. on 4.2.1980, the suit building was governed by decree No.43525; since the Goa Rent Control

Act was in force only in respect of certain areas notified under Notification No.RD/BLDG/77/69 II dated 30.9.1969 and the Village Nerul, wherein the suit building is situate was outside the areas notified under the said notification.

10. During the pendency of the suit, vide Notification No.RD/BLDG.77/69-II dated 23.12.1980 the provisions of the Goa Rent Control Act came to be extended and the entire area of Union Territory of Goa, Daman and Diu (now State of Goa in relation to the then Union Territory of Goa) was brought within the purview of the said Act. He further pointed out that although Section 56 of the said Act barred the jurisdiction of the Civil Court to settle, determine or deal with any question which is by or under the said Act required to be settled, determined or dealt with by the Rent Controller, the Rent Tribunal, the Appellate Board, the Administrative Tribunal or the Administrator, but Section 59(2) specifically excludes from the purview of Section 56, suits or proceedings which were pending at the commencement of the Goa Rent Control Act notwithstanding repeal of the provisions of decree No.43525 dated 7.3.1961 and Legislative Diploma No.1409, dated 14.2.1952 and, the corresponding provisions of other law for the time being in force. In his submission, at the relevant time when the suit was filed, Portuguese Rent Control

Act; in the form of Decree No.43525; was in force and as per the said Portuguese Rent Control Act, the suit in respect of the termination of the tenancy, eviction of the tenants, recovery of the rents, etc., was triable by the Civil Court and no other separate authority had any jurisdiction to try such suits.

11. Learned Counsel reiterated that in view of the express provision of Section 59(2), the pending suits, on the date of extension of the provisions of the Goa Rent Control Act to the new areas, were saved and express jurisdiction of the Civil Court was retained to decide, determine or deal with the suit for eviction of the tenants.

12. Alternatively, learned Counsel for the appellants submitted that the present suit was filed by the appellants for (a) eviction of respondents from the suit building; (b) recovery of arrears of rents; and (c) mesne profits, as such, the entire suit could not have been dismissed by the Lower Appellate Court even on the interpretation of Section 59(2) of the Goa Rent Control Act adopted by it. At any rate, the second prayer for recovery of the arrears of rents was very much triable by the Civil Court and to that extent, the suit was very much maintainable. He, thus, tried to find fault with the Judgment of the Lower Appellate Court also

on this count.

13. He further argued that the question of jurisdiction of Civil Court to try suit on account of the extension of the Goa Rent Control Act was neither raised in the trial Court, although the suit was prosecuted in the trial Court after the extension of the said Rent Control Act, nor the said point of jurisdiction was taken in the memo of appeal filed by the respondents before the Lower Appellate Court. The said question of jurisdiction was raised for the first time at the time of final hearing of appeal as such the learned Lower Appellate Court ought not to have dealt with this question and at any rate, could not have dismissed the appeal holding that on account of the extension of the Goa Rent Control Act to the area in question, during the pendency of the suit, the jurisdiction of the Civil Court was barred in spite of the fact, true and proper interpretation of the clear provision of Section 59(2) was brought to the notice of the learned first appellant Court.

14. The learned Counsel for the appellants urged that in the instant case, the suit was validly instituted on 4.2.1980, the Goa Rent Control Act came to be extended to the area in which suit house is situate on 23.12.1980 i.e. during the pendency of the suit and Section 59(2) of the said Rent Control Act emphatically saved the

jurisdiction of the Civil Court with respect to the civil suits instituted before extension of the said Rent Control Act to the area in which suit house falls. The learned Counsel for the appellants relied upon the Judgment of the Apex Court in the case of Karam Singh Sobti and another v. Shri Pratap Chand and another A.I.R. 1964 S.C. 1305 in support of his submissions. He also placed reliance on another Judgment of the Supreme Court in the case of Sankaranarayanan Potti (dead) by L.Rs. v. K. Sreedevi and ors. (1998 AIR SCW 1598). He, on the above premises, prayed that the appeal should be allowed and the case be remanded to the first appellate Court for determination of the rest of the issues, in accordance with law.

RESPONDENTS' SUBMISSIONS

15. Per contra, at the out set, Mrs.Agni, learned Counsel appearing for the respondents, contended that the suit filed by the plaintiff could not be said to be a suit filed under the provisions of Decree No.43525 in view of specific reference to the termination of tenancy by notice as contemplated under Section 111 of the Transfer of Property Act ('T.P. Act' for short). The suit, therefore, could not be said to be under the provisions of Decree No.43525. It has to be treated as having been filed under the provisions of T.P. Act.

Learned Counsel relying upon para 7 of the plaint, tried to contend that the cause of action for suit being based on termination of tenancy and consequent failure to vacate suit house by the defendants/ respondents as required by notice dated 10.1.80, the suit cannot be said to be under Portuguese Rent Control Act. The pleadings as also evidence on record, were also put in service in support of her submission to demonstrate that the cause of action for filing the suit was termination of tenancy under T.P. Act.

16. The learned Counsel for the respondents, alternatively, submitted that even if it is held to be a suit under Decree No.43525; even then, as held by the Apex Court in the case of Laxmi Narayan Guin v/s Niranjana Modak, A.I.R. 1985 S.C. 111, the Lower Appellate Court was bound to take note of change in law and to decide appeal accordingly. She further submitted that the rent control legislation being beneficial piece of legislation beneficial to the class of tenants the provisions thereof are to be made applicable even in a case where the suit has been decreed under the provisions of Transfer of Property Act. Relying upon the decision in the case of Mani Subrat Jain v. Raja Ram Vohra A.I.R. 1980 S.C. 299 she further urged that it was held by the Apex Court that the rent control legislation in a country of terrible accommodation shortage is a beneficial measure

whose construction must be liberal enough to fulfil the statutory purpose and not to frustrate it. So construed the benefit of interpretative doubt belongs to the potential evictee unless the language is plain and provides for eviction. That intendment must by interpretation, be effectuated.

17. The learned Counsel urged that while interpreting Section 13 of East Punjab Rent Restriction Act, ('Punjab Rent Act' for short), the Apex Court held that Section 13 convincingly includes ex-tenants against whom decrees for eviction might have been passed, whether on compromise or otherwise. The Apex Court held that the tenant enjoyed immunity under Section 13 of the Punjab Rent Act. In her submission, Section 13 of the Punjab Rent Act is in pari materia with Section 21 of the Goa Rent Control Act, as such, the respondents/defendants (tenants) enjoyed the same immunity from eviction under the Rent Control Act applicable to the State of Goa.

18. Turning to the next authority of the Apex Court in the case of H. Shiva Rao and another v. Cecilia Pereira and others, A.I.R. 1987 S.C. 248, the learned Counsel further argued that it is well recognised legal principle that Rent Control Legislations being beneficial to the tenant have to be given a liberal interpretation. While ordinarily substantive rights

should not be held to be taken away except by express provision or clear implication; in the case of Rent Control Act. It being a beneficial legislation the provision which confers immunity to the tenant against eviction by the landlord though prospective in form operates to take away the rights vested in the landlord by a decree of a court; which has become final, unless there is express provision or clear implication to the contrary.

19. Learned Counsel further contended that an order or decree for eviction of tenant passed prior to the date when the Goa Rent Control Act was made applicable to the area in question cannot be executed against the tenant after the said Rent Control Act was made applicable to the area in question. If the provisions of the said Rent Control Act are construed to the contrary the same will not further the purpose of the legislation, on the other hand, it will do violence to the language or would be contrary to the literal meaning thereof.

20. She urged that the Rent Control Act applicable to the State of Goa in fact provides that no tenant shall be evicted except on the grounds as set out in the Act. Section 22 of the Goa Rent Control Act provides for certain grounds such as arrears of rent,

nuisance, sub-letting, etc. In terms of Section 21 of the said Rent Control Act, the tenant cannot be evicted whether in execution of a decree or otherwise except in accordance with the provisions of the said Rent Control Act. Therefore, the appellate Court was justified in holding that the Judgment and decree of the trial Court was without jurisdiction.

21. She alternatively, further submitted that even assuming for the sake of argument the suit was well within the sweep of Section 59(2) of the Goa Rent Control Act, and that the Civil Court had a jurisdiction to entertain and try the suit, even then, while trying the suit and ordering eviction of the tenant, the trial Court was required to decide the matter considering the provisions of the extended Goa Rent Control Act in view of first proviso to Section 59(2). This has not been done by the trial Court. The trial Court having failed to take into account the amended provisions of the Goa Rent Control Act the impugned Judgment stood vitiated, if that be so the impugned Judgment of the Lower Appellate Court can very well be justified on this count, as such this Court should not interfere with the impugned Judgment and Decree and the appeal be dismissed with costs.

THE ISSUE

22. On the above facts and submissions advanced, the issue that needs consideration could be summarised thus :

Whether the Lower Appellate Court was justified in holding that the decree passed by the trial Court stood vitiated on account of extension of the provisions of the Goa Rent Control Act, 1968 during pendency of appeal to the entire State of Goa, including the Village wherein suit building is situate ?

THE STATUTORY PROVISIONS

23. Before examining the arguments in support of the rival contentions, it is necessary to look at the scheme of the Rent Control Legislation applicable to the State of Goa.

24. It may be noted prior to the enactment of the Goa Rent Control Act of 1968, which came into force in the year 1969, the provisions of Portuguese Rent Control Act were in force which were contained in the form of Decree No.43525 and as per the said Portuguese Rent Control Act, the suit in respect of the termination of the tenancy, eviction of the tenant, recovery of the rent, etc., was triable only by the Civil Courts and no other authority had jurisdiction to try such suits.

25. The Goa Rent Control Act, which came into force vide Notification dated 30.9.1969 was initially, made applicable to a few areas of the Union territory of Goa, Daman and Diu. The relevant provisions of the said Act relevant for the present appeal, are as under :

"56. Jurisdiction of the courts barred. -

Save as provided in this Act, no court shall have jurisdiction to settle, determine or deal with any question which is by or under this Act required to be settled, determined or dealt with by the Controller, the Rent Tribunal, the Appellate Board, the Administrative Tribunal, or the Administrator and no order passed by any such authorities under this Act shall be called in question in any court.

59. Repeals and savings.- (1) As from the date on which this Act is brought into force in any local area, the provisions of Decree No.43525, dated the 7th March, 1961, and the Legislative Diploma No.1409, dated the 14th February, 1952 and the corresponding provisions of any other law for the time being in force shall stand repealed in that area.

(2) Notwithstanding the repeal of the laws by sub-section (1), all suits and other proceedings under a repealed law pending at the commencement of this Act before any court or authority shall be continued and disposed of in accordance with the provisions of the repealed law as if that law had continued in force and this Act had not been passed;

Provided that in any such suit or proceeding for the fixation of fair rent or for the eviction of a tenant from any building, the court or other authority shall have regard to the provisions of this Act;

Provided further that the provisions for appeal under the repealed law shall continue in force in respect of suits and proceedings disposed of thereunder."

In continuation of the earlier Notification dated 30.9.1969, vide Notification being No.RD/BLDG.77/69-II dated 23.12.1980, the provisions of the Goa Rent Control Act, were extended to all the remaining areas of the Union Territory of Goa, Daman and Diu, the contents of which are reproduced hereinbelow :

" In continuation of Government Notification of even number dated 30.9.1969 and in exercise of the powers conferred by sub-sections (2) and (3) of Section 1 of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (Act 2 of 1969), the Administrator of Goa, Daman and Diu hereby extends the provisions of the said Act to all the remaining areas of Union Territory of Goa, Daman and Diu and further directs that the provisions of the aforesaid Act shall be enforced in the said areas with immediately effect. "

CONSIDERATION AND FINDINGS

26. Having heard the parties, it is not in dispute that at the time of filing of the suit on 4.2.1980, the suit building was governed by Decree No.43525. As aforesaid, the Goa Rent Control Act was applicable to only certain areas notified under Notification dated 30/9/1969 and the Village of Nerul wherein the suit building is situate, was outside the area notified under the Goa Rent Control Act. It is also not in dispute that when the suit was pending, vide Notification dated 23.12.1980, the provisions of the Goa Rent Control Act were extended to all the remaining areas

of the then Union Territory of Goa (now State of Goa), Daman and Diu with the result entire State of Goa was brought within the umbrella of the said Rent Control Act. The issue involved in this appeal centres around the interpretation of repeal and savings clause engrafted under Section 59 of the said Act. However, before considering the scope of Section 59 of the said Act, it is necessary to deal with the preliminary submission made by the respondents that the suit is not referable to the provisions of Decree No.43525. The cause of action for the suit being termination of the tenancy by notice issued under Section 111 of the T.P.Act, the suit was under the T.P. Act and not under Decree No.43525, as such, the Lower Appellate Court was perfectly justified in holding that the suit would be governed by the provisions of the Goa Rent Control Act. In this view of the submission, according to the respondents, the appellants are not entitled to claim advantage of Section 59(2) of the Act and the impugned Judgment and Decree of the Lower Appellate Court is liable to be maintained.

27. In order to appreciate and decide this preliminary contention, one has to turn to the pleadings incorporated in the plaint and other surrounding circumstances coupled with intrinsic evidence available on record. Let me first turn to the Decree No.43525, so as to find out its requirement. Sub-Section II of the

Decree No.43525 titled as "**Rescission**" contained Sections 45 to 49. Section 45 provided for rescission of agreement of tenancy due to non-fulfilment of terms and conditions of Decree by the lessee. Section 46 provided grounds for rescission of the agreement. The grounds available for eviction of tenant amongst others were; non-payment of rent-by lessee within the time limit at the proper place or failure to make a deposit thereof; and/or user of the premises by a third party for the purpose different from that of those for which it was meant. Therefore, reading of the said provisions would show that the suit for eviction, amongst others, was permitted on the ground of arrears of rent or for change of user of the premises. In the light of provisions of the Decree No.43525, the contents of the plaint need to be examined to determine the question raised by the respondents. If one turns to the plaint, it would be clear that the foundation of termination of the tenancy seems to be arrears of rent and change of user of the suit premises. A specific pleading is to be found in the plaint claiming for arrears of rent in the sum of Rs.1975/- from 2.7.1972 to February, 1980. The plaint specifically makes out a case that besides arrears of rent, defendants are guilty of change of user as they were using the suit house for their residence i.e. for the purpose different from that of those for which it was meant.

28. Not only in the plaint above mentioned pleadings are to be found, but the evidence of the plaintiffs would specifically show that on these issues, the evidence was also led by the parties. The defendants cross examined plaintiffs on these vital aspects of the matter. Turning to the Judgment of the trial Court, it would be clear that the trial Court also dealt with the issues based on the pleadings under Sections 45 and 46 of the Decree No.43525. Specific issue Nos.3 and 4 were framed in this behalf and after appreciating the evidence, findings were also recorded by the trial Court. In this view of the matter, one has to reach to the conclusion that the suit was filed under the provisions of Decree No.43525 and not under the T.P. Act. The preliminary contention sought to be raised by the learned Counsel for the respondents, in this behalf is, therefore, devoid of any substance for the reasons recorded herein.

29. Now coming to the crucial issue involved in the present appeal, one has to consider the sweep of Section 56 of the Act, which barred the jurisdiction of the Civil Court to settle, determine or deal with any question which is by or under the new Act required to be settled, determined or dealt with by the Rent Controller, the Rent Tribunal, the Appellate Board, the Administrative Tribunal or the Administrator and further

provided that no order passed by any such authorities under the Act shall be called in question in any Court.

30. In order to find out whether the jurisdiction of Civil Court is barred or not, it is also necessary to consider the sweep of Section 59(1) of the Act which provides that as from the date on which this Act is brought into force in any local area, the provisions of decree No.43525 dated 7.3.1961 and Legislative Diploma No.1409 dated 14.2.1952 and the other corresponding provisions of any other law for the time being in force, shall stand repealed in that area. Section 59(1) provides for complete repeal of the provisions of Decree No.43525 and Legislative Diploma No.1409. However, sub-Section (2) of Section 59 provides that notwithstanding the repeal of the laws by sub-section (1) all suits and other proceedings under a repealed law pending at the commencement of this Act before any Court or authority shall be continued and disposed of in accordance with the provisions of the repealed law as if that law had continued to remain in force and this Act had not been passed. The meaning of the opening part of the said sub-Section (2) is absolutely clear that the repealed Act shall have no effect so far as the suits and other proceedings under the repealed law pending at the commencement of the Rent Control Act before any Court or authority are concerned

and the same are to be continued and disposed of in accordance with the provisions of the repealed law. First proviso to sub-Clause (2) provides that in any such suits or proceedings for fixation of fair rent or eviction of a tenant from any building, the Court or other authority shall have regard to the provisions of the Goa Rent Control Act. The second proviso further provides that the provisions for appeal under the repealed law shall continue to remain in force in respect of the suits and proceedings disposed of thereunder. The Apex Court in the case of Karam Singh Sobti and another v. Shri Pratap Chand and another had occasion to deal with the similar provisions. The language used in Section 59 of the Goa Rent Control Act and more so sub-clauses (1) and (2) of Section 59 is identical with that of Section 57 of the Delhi and Ajmer Rent Control Act, with which Supreme Court was concerned, thus reads as under :

"57. (1) The Delhi and Ajmer Rent Control Act, 1952, in so far as it is applicable to the Union territory of Delhi, is hereby repealed.

(2) Notwithstanding such repeal, all suits and other proceedings under the said Act pending, at the commencement of this Act,

before any court or other authority shall be continued and disposed of in accordance with the provisions of the said Act, as if the said Act had continued in force and this Act had not been passed:

Provided that in any such suit or proceeding for the fixation of standard rent or for the eviction of a tenant from any premises to which section 54 does not apply, the court or other authority shall have regard to the provisions of this Act.

Provided further that the provisions for appeal under the said Act shall continue in force in respect of suits and proceedings disposed of thereunder."

31. In the aforesaid Supreme Court case the respondent Pratap Chand was the owner of Pratap Buildings in Connaught Circus, New Delhi. He had let a room in it to the respondent, the Automobile Association of Upper India, formerly known as Automobile Association of Northern India referred to in that judgment as "Association". The appellant was a sub-tenant of the room under the Association. On 5.10.1959, the respondent issued notice to quit and on 25.12.1954 brought a suit

against the Association and the appellant (in that case) for their eviction from the room. It is out of this suit, the litigation arose and reached to the Apex Court. The question was, whether the appellant was liable to be evicted ?

32. The facts of that case revealed that Section 13 of the Delhi and Ajmer Rent Act, 1952, which had come into force on 9.6.1952 and governed the case, prohibited the Courts from directing eviction of a tenant in the suit of a landlord excepting in the cases mentioned in the proviso to it. Clause (c) of the said proviso provided that a decree for recovery of possession might be made where the Court was satisfied that the tenant without obtaining the consent of the landlord has before the commencement of that Act, sublet, assigned or otherwise parted with the possession of, the whole or any part of the premises. The respondent relied upon this provision of the said Act and contended that the Association had without his consent sub-let the shop-room to the appellant and that he had come to know of this sub-letting at the end of May 1954. The Association did not contest the suit seriously, but the appellant did. Both the Association and the appellant admitted that the landlord had not consented to the sub-letting, but, the appellant contended that the respondent had full knowledge of his occupation of the shop-room as a

sub-tenant and with such knowledge he had accepted rent from the Association and thereby acquiesced in the sub-letting and was, therefore, not entitled to eviction on the ground of sub-letting without the landlord's consent. The learned trial Judge had directed ejectment of the Association and the appellant. The appellant then preferred appeal. The appeal was allowed. Decree for possession was set aside. The suit was dismissed on 11.6.1957. On August 26, 1957, the respondents moved the High Court of Punjab in revision under Section 35 of the said Act. While revision petition was pending in the High Court, the Delhi Rent Control Act, 1958 came into force. It repealed the Act of 1952, but made some of the provisions of the repealed Act applicable to certain pending matters. One of the questions in that appeal was which of the provisions of the new Act would apply to the pending cases. While considering this question, the Supreme Court was pleased to hold as under :

"(10) Let us now consider S.57, of the Control Act of 1958 against the background of the scheme of the two Control Acts, as stated above, The first sub-section of S.57 repeals the Control Act of 1952 in so far as it is applicable to the Union Territory of Delhi. If the repeal stood by itself, the provisions of the General Clauses Act (X of 1897) would

have applied with regard to the effect of the repeal and the repeal would not affect the previous operation of any enactment repealed or anything duly done or suffered thereunder or affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. The provisions of the General Clauses Act will not, however, apply where a different intention appears from the repealing enactment. Such an intention is clear from sub-sec.(2) of S.57 which contains the saving clause. It states in express terms that notwithstanding the repeal of the Control Act of 1952; all suits and proceedings under the Control Act of 1952 pending before any Court or other authority at the commencement of the Control Act of 1958, shall be continued and disposed of in accordance with the provisions of the Control Act of 1952, as if the Control Act of 1952 had continued in force and the Control Act of 1958 had not been passed. Nothing can be more emphatic in the matter of a saving clause, than what is contained in sub-s.(2) of S.57."

33. The above Judgment of the Apex Court is fully applicable to the facts of the case on hand. The

facts in the present case are identical with that of the above case of Karam Sing Sobti and another (cited supra). The provision of Section 59(2) of the Goa Rent Control Act is also identical with that of Section 57(2) of the Delhi Rent Control Act of 1958. The language used in Section 59(2) of the Goa Rent Control Act is plain and provides for protection of benefits of the eviction decree passed under repealed law. In this backdrop, there is no alternative, but to hold that the Lower Appellate Court was wrong in holding that the suit would be governed by the Goa Rent Control Act and not by Decree No.43525. In this view of the matter, the impugned Judgment and Decree of the lower appellate Court is liable to be quashed and set aside and the same is, accordingly, quashed and set aside. The proceedings are remitted back to the Lower Appellate Court for decision on merits. So far as other issue raised by the learned Counsel for the respondents; based on the first proviso to Section 59(2) is concerned, the issue needs no consideration in the present appeal for want of any finding in this behalf by the Lower Appellate Court. The parties are at liberty to raise this contention before the Lower Appellate Court who shall be free to decide it on its own merits. All other contentions on merits are left open.

34. In the result, appeal is allowed, impugned

Judgment and Decree of the Lower Appellate Court is set aside, proceedings are remitted back to the Lower Appellate Court for decision on merits in accordance with law. The Lower Appellate Court is directed to decide this appeal as expeditiously as possible, at any rate within 4 months from the receipt of writ from this Court. Parties are left to bear their own costs.

V.C. DAGA, J.

ssm.